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CSCE DIGEST

March 29, 1988

INTERNATIONAL COVENANTS ON HUMAN RIGHTS:

On March 29, the Commission held a hearing on the prospects of U.S. ratification of two international human rights treaties, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. Appearing before the Commission were Senator Mark O. Hatfield, Chairman of the Arms Control and Foreign Policy Caucus; Assistant Secretary of State for Human Rights and Humanitarian Affairs Richard Schifter; Professor Rosalyn Higgins; and Hurst Hannum. Submitting testimony for the record was Senator Claiborne Pell, Chairman of the Foreign Relations Committee.

The following are excerpts from the hearing and the submitted testimony.

HATFIELD:

"Mr. Chairman, these covenants are nothing new. Adopted by the U.N. General Assembly in 1966, they entered into force in 1976 after 35 nations had ratified them. President Jimmy Carter signed them in 1977 and submitted them to the Senate in 1978 for its advice and consent. When hearings finally were held in the closing months of 1979, more than 50 people testified in favor of them – including the U.N. Ambassador to the United Nations, the Director of the American Civil Liberties Union and the Chairman of Amnesty International. The Senate Foreign Relations Committee seemed ready to report the covenants favorably to the full Senate when the Soviet Union invaded Afghanistan. The covenants have not been discussed or debated since.

". . . Our ratification of these covenants is long overdue.

"Let me go back for a moment to review the substance of these covenants. Perhaps a line from the preamble of both covenants is the best place to start: 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.' Starting from that premise, the covenants spell out the basic rights I believe should be guaranteed for every man, woman and child on earth.

"The Covenant on Civil and Political Rights prohibits torture, arbitrary and inhuman punishment, slavery, and arbitrary arrest and detention. It provides for freedom of movement and for the integrity of the judicial system. It expressly forbids arbitrary interference with family, home or correspondence, and guarantees the freedom of thought, conscience and religion, the right to peaceful assembly, and the right to take part in public affairs. In short, the Covenant on Civil and Political Rights represents the traditional Western view of human rights as incorporated in our Declaration of Independence and the U.S. Constitution as well as the political documents of Europe before them.

NOTICE

The quotes contained herein were taken from the transcript of the Commission hearing on March 29, 1988. They have been abridged by the Commission staff for purposes of clarity in this publication.

"As important as these rights are, Mr. Chairman, they do not mean much if people cannot find enough to eat, a roof under which to sleep, a job or an education. Human rights must mean more than the absence of torture or the freedom from censorship, and the Covenant on Economic, Social and Cultural Rights was drafted in recognition of that fact. It guarantees the right to food, shelter, work and education. It guarantees the right to join or form a labor union, the right to social security, the protection of the family and the right to take part in cultural activities. In short, the Covenant on Economic, Social and Cultural Rights make clear that human rights are linked inextricably with human needs.

"'The numbers stand in long rows,' writes Ruth Leger Sivard in the most recent edition of *World Military and Social Expenditures*, 'like tombstones, monuments to lives lost to neglect: 100 million people have no shelter whatsoever, 770 million do not get enough food for an active working life, 500 million suffer from iron-deficiency anemia, 1.3 billion do not have safe water to drink, 800 million live in absolute poverty, 880 million adults cannot read or write, 10 million babies are born malnourished every year and 14 million children die of hunger.' These statistics, as appalling as they are, become even more so when you think about the individual men, women and children they represent. They also become very revealing.

"We live in a world at war. Twenty-two wars were underway at the beginning of this year, more wars than at any previous time in recorded history. In 1987, well over 2 million people died in these wars – 84 percent of them were civilians. This is a world at war, Mr. Chairman, because this is a world full of hunger and homelessness, full of repression and exploitation. As a nation, we must recognize

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Senator Mark O. Hatfield testifying before the Helsinki Commission.
Photo by Fritz Myer

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that fact and those needs—not only because we are morally obligated to do so, but also because the success of our foreign policies depends on it.

"When I was invited to testify at this hearing, Mr. Chairman, I began to think about my own views on human rights and the relationship of those rights to the success of our foreign policies.

"Two of the most often-cited U.S. foreign policy disasters in recent years are Iran and Nicaragua. Both are countries which had a strong relationship with the United States a decade ago. Indeed, both were our most trusted ally in their respective region. Today, they are our fiercest enemy in the same regions. The reason why these two countries turned on us—beneath the layers of debate over capitalism and communism, over fundamentalism and progressivism—has more to do with human rights than with anything else.

"There are those today who suggest that both leaders fell because the U.S. abandoned them. I reject that notion. What the United States did was recognize the increasing unpopularity of these leaders, an unpopularity bred in large part of years and years of institutionalized human rights violations. That recognition, combined with a President who had a genuine personal commitment to human rights, led us to rethink our previously unquestioned support for the leaders and their rule. The problem was that it was too little, too late. The popular resentment of the leaders, and of the United States for supporting those leaders and their brutal regimes for so long, had gone too far. In Iran and Nicaragua, revolution was inevitable.

"The lesson to be learned from Iran and Nicaragua is not that we should keep our mouths shut when our allies—even our closest allies—violate basic human rights. Indeed, the lesson is just the opposite: we must state our commitment to human rights strongly and honestly to friend and foe alike. And to our friends, our allies, we must do it *before* revolution is inevitable. I am convinced, Mr. Chairman, that the success of our foreign policies depends on it.

"These covenants were first adopted by the U.N. General Assembly the year I was first elected to the Senate. A lot of lives have been lost in the troubled world since then, a lot of lives of a lot of people whose genius and compassion were taken for no legitimate reason at all. A lot more people have been denied the rights we consider inalienable—the right to eat, the right to read, the right to speak, the right to worship and the right to their own bodies. No legitimate reason exists for their denials either.

"This is a world at war, Mr. Chairman, because this is a world full of hunger and homelessness, full of repression and exploitation."

"I do not mean to suggest that our ratification of two covenants, regardless of how important they are, will change the world overnight. It will not. What I *do* mean to suggest is that our ratification of these two covenants would send a strong signal—a signal that, in the midst of hunger and homelessness, repression and exploitation, we will champion the fundamental importance of human rights.

"Mr. Chairman, the ratification of these covenants will only be possible if we in the Congress have the political will to do it. Unfortunately, we all too often muster the political will for weapons of war but fail to find it for weapons of peace. That is exactly what these covenants are—weapons of peace.

"I was pleased to learn that Senator Claiborne Pell—the Chairman of the Senate Foreign Relations Committee—and Congressman Dante Fascell—the Chairman of the House Foreign Affairs Committee—have agreed to testify in support of these covenants. Their support for them, and the convening of this hearing, suggest to me that the necessary political will just might be here this time."

PELL:

"Mr. Chairman, I firmly believe today, as I did nine years ago, that both covenants should be ratified.

"The United States has a long and proud record in the area of human rights. To be sure, it is not a record of perfection, but it is a record of a people who have worked and struggled to overcome and resolve the injustices in their society. These injustices have not all been cured and the struggle for a more just society must continue.

"Our Nation has been at the forefront of the international effort to promote and protect human rights. The United States was instrumental in shaping the Universal Declaration of Human Rights and in pressing for the negotiation of the two covenants which we are now discussing. Within the East-West context, the United States has led the effort to promote Soviet and East European compliance with the Helsinki Final Act. The United States has elevated human rights to a central position in our bilateral relations, often linking the extension of foreign aid to improvements in a recipient's human rights record.

"The unfortunate fact is that our failure to ratify the Covenants has cast a shadow over our commitment to human rights."

"The unfortunate fact is that our failure to ratify the covenants has cast a shadow over our commitment to human rights. It has confused our friends and been exploited by our adversaries, particularly at review meetings of the Conference on Security and Cooperation in Europe. As I pointed out when testifying in 1979 on these covenants, the Helsinki Commission always held the view that other Helsinki signatories, especially those in the East, would better understand the depth of our concern for the full realization of the Helsinki pledges if we demonstrate that we are working hard at home to fulfill our side of the bargain. That is still true today."

HIGGINS:

on the U.N. Human Rights Committee:

"The Committee has three functions, one of these is academic at the present time, its role in interstate complaints under article 41 of the covenant. No such complaints have been initiated and that doesn't seem likely in the immediate future. But the other two functions engage us heavily, dealing with state reports and determining the case law. Under an optional protocol ratifying parties recognize the competence of the Committee to receive complaints from individuals within their jurisdiction who claim that their human rights under the covenant have been violated.

"We do now have 40 state parties to this procedure, and we have reached the point pretty much this session where we have a steeply increasing number of cases. Our findings on these cases which we term 'views', are published.

"Not all of the signatories of the Helsinki Final Act have become parties to the covenant. For some, perhaps that is mostly a question of status, here I speak of the Holy Sea, Liechtenstein, Monaco and San Marino. But, of course, other reasons have to be looked for for the nonratification of Malta, Switzerland, Turkey, and of course, the United States. All the East European parties to the Helsinki Final Act are parties to the covenant. However, none of the East European states are a party to the optional protocol procedure, they do not allow the possibility of individual cases being brought against them. . . I now turn to the covenant itself, and leave aside the optional procedure. Under the covenant the main task of the Committee is to monitor compliance with the covenant through the examination of state reports. All states parties are required to submit reports, an initial report within one year, and periodic reports every five years. We believe the five-year cycle about the right space of time, thus allowing the Committee to keep in touch with what is going on in the various countries, but allowing states a reasonable breathing space between their reporting obligations.

Professor Rosalyn Higgins testifying before the Commission on the monitoring by the United Nations Human Rights Committee of compliance with the Covenants through the examination of state reports. "because we don't select problem states, or rank states in any priority, it follows that we deal with all states comparably. . . . Any state becoming a party to the Covenant must expect that equality of treatment"

Photo by Fritz Myer

re: the required 5-year periodical reports:

"We try to engage in what we term a constructive dialogue, a frank but polite exchange that encourages governments to think carefully about the points being put to them, in order to encourage and insist in the promotion of human rights. There may well be a place in the U.N. system for bodies that roundly condemn, or seek to rank states . . . but that is not our role as lawyers. Our role is simply to ensure state by state that the covenant is being complied with.

"It matters not to us that state X is generally a good human rights country, or that state Y is generally a human rights violator. We want to know from each of them about the protection in their country of the specific rights guaranteed in the covenant.

"We take the reports strictly in the order that they are due and available. We don't single out problem states. A state that is invited to discuss its report with us knows that the reason is simply that the time has come around for that examination. There is no stigma attached, no adverse implication. Because we don't select problem states, or rank states in any priority, it follows that we deal with all states comparably. And that is, perhaps, sometimes a little uncomfortable for the better human rights states, including the Western liberal democracies. They will have to undergo the same examination as a state with a bad human rights record. Shortcomings under the covenant will be discussed and analyzed because our task is to assist in the implementation of human rights across the board, not just to improve human rights in the least compliant countries.

"Any state becoming a party to the covenant must expect that equality of treatment.

"The Committee is of course well able to distinguish between laws on paper, and the reality in a given country. We issue guidelines to states for their reporting which makes it clear that we don't just want a list of legislation, we want to know about administrative practice, judicial decisions, general circumstances. In short, we want to know about substance, and not just the form.

"The examinations of the East European countries have been probing and critical. At the same time the Committee doesn't treat political groupings of states monolithically. Our examinations are very country-specific. The situation in Hungary, for example, was significantly different from that of Czechoslovakia, although we had the state reports at the same session.

"A scrutiny of the records of the Committee would show detailed and persistent questioning put to all of these countries, and to others, too. And it would also show the criticisms advanced. There has been insistent interest in the Committee on issues relating to freedom of movement, the right to participate in political life, free speech, fair trial, freedom of opinion, the right to unionize, freedom of religion and other provisions under the covenant.

"The covenant, I think, represents a common understanding as to what basic rights persons are entitled to, regardless of their race, sex, or religion; regardless of the type of political society in which they live. The willingness of states to submit to third-party scrutiny in this regard is both a symbol of internal confidence, and an assistance in building a system that will allow monitoring worldwide, including in respect of those particular countries where it is most needed. My personal belief, Mr. Chairman, both as a Committee member and as a United Kingdom national, is that the United States should be part of this endeavor."

HANNUM:

"There are two possible reasons for the U.S. failure to ratify the covenants in the last 20 years. The first is what one might call substantive, that is that somehow the rights set forth in the covenants are so different from rights guaranteed in the United States that it would be legally, or morally impossible for the United States to ratify the covenants, because our views are so different.

"The second possible reason is a political one, being that the U.S. rejects the very principle of international definition of, and supervision over human rights.

" . . . when the two covenants were submitted to the Senate in 1978, a series of reservations, declarations and understandings was attached to the covenants, in order to ensure that they would be consistent with U.S. law and practice. It is clear that the covenants are, in fact, consistent with the basic principles of this country. An additional safeguard, if you like, was the declaration by President Carter that neither covenant would be considered to be self-executing. That is that it would have no direct enforceability inside the United States. Not a single responsible scholar opposed ratification of the covenants on legal or substantive grounds. As Ambassador Schifter noted, while in seven years the Justice Department apparently hasn't looked at the covenants, no one even in the Justice Department has suggested that there is any legal impediment to our ratification of the covenants.

"However, the reasons that the United States has not ratified the covenants are neither substantive, nor procedural. They are wholly political. During the past decade, and particularly since 1981, the United States has consistently rejected multilateral as opposed to bilateral efforts to secure universally accepted human rights norms. Indeed, the United States, I would suggest, has come perilously close to rejecting the entire idea of international law.

"The U.S. withdrawal from the compulsory jurisdiction of the International Court of Justice is but the most striking example of a bizarre, I must say, unwillingness to submit either our ideas, or our actions to international scrutiny. The unilateral refusal to pay our assessed dues to the United Nations, the illegal closing of the observer mission of the PLO to the United Nations, and the failure to ratify any multilateral human rights treaty in the last 20 years reflects, in my view, a neo-isolationism that arrogantly considers U.S. interests, as defined by the United States, to be beyond the reach of the international community.

"Of the 22 major international human rights treaties for which statistics are regularly kept by the United Nations, the United States is a party to only six, four of these deal with slavery, one dating from 1929; the fifth is the 1967 Protocol relating to refugees, and the final is the 1953 Convention, which takes the extraordinary step of prohibiting discrimination against women in voting and holding public office. And it took over two decades for the United States to ratify this last treaty. The current administration certainly should be congratulated on securing Senate consent to the Genocide Convention, although as noted, the implementing legislation has yet to be adopted.

"Not a single human rights treaty has been signed by the current administration in seven years, nor has any effort whatsoever been taken to secure approval by the Senate of any of the human rights treaties currently pending before it.

"As has been noted, no one believes that mere signature ratification of the covenants will improve the situation of human rights in the world, anymore than adoption of the 14th amendment to the U.S. Constitution improved the situation of racial discrimination in this country in 1868, but it is the international acceptance of those norms that legitimizes and justifies U.S. interest in their enforcement, just as the proclamation of equality in 1868 justified the legal and moral claims that were not achieved until a century later.

"I think first it is important to be very clear about what the economic covenant requires. And I would like to just quote very briefly from article 2 which sets out the basic obligations, 'Each state party to the present covenant undertakes to take steps to the maximum of its available resources with a view to achieving progressively the full realization of the rights recognized by all appropriate means, including particularly the adoption of legislative measures.' If one wants to refer to escape clauses, that is a very large one. What it requires is an immediate obligation to make progress, and it is, I would suggest, impossible for any international body to find a country in violation of this covenant very easily.

"Most of what is in the covenant I think reflects policies that are very much a part of this country, and have been at least since the days of Franklin Roosevelt. They are policies that reflect the fact that people should not be unemployed, if we could help it, that they should not starve, that they should have adequate clothing and shelter, and in that respect, again, the Carter administration with a certain number of reservations, understandings, et cetera, felt that the United States could comply with all the provisions of the Economic and Social Covenant.

"During the past decade, and particularly since 1981, the United States has consistently rejected multilateral as opposed to bilateral efforts to secure universally accepted human rights norms. Indeed, the United States, I would suggest, has come perilously close to rejecting the entire idea of international law."

Hurst Hannum addressing the Commission. Executive Director of the Procedural Aspects of International Law Institute, legal advisor to the Cambodia Documentation Commission, and Adjunct Professor of international human rights at University of Virginia and American University law schools.

"I think it is unfortunate that by attacking these rights, we have given up the argument to Eastern Europe, if you will, which always claims that it is much more concerned with economic rights and social conditions, than the United States and that capitalism is inherently evil and leaves people out in the cold to starve.

"We only contribute to that argument by rejecting the concept of economic and social rights. Whereas, in fact, I think that the protection of those rights in this country is not as great as it is in some, it is certainly nothing to be, in general, ashamed of. In fact, I think the international, if not supervision, at least attention to the situation of economic and social rights in this country would be very helpful. There are going to be disagreements with the extent to which the government should provide shelter, housing, or food. But those have been part of the political argument, domestically, for the last 40 years. And I fail to see what we would lose by permitting them also to become part of the international argument."

SCHIFTER:

"Mr. Chairman, technically speaking, as we all know, this is not a hearing on the international human rights covenants. It is an inquiry by this Commission to determine why during the 22 years that have elapsed since the U.N. General Assembly approved the covenants, the United States has not ratified them.

"If this had been a hearing on the covenants and I had been called upon to present clear testimony for the administration, I would have informed the Commission that as far as the administration is concerned, the covenants are under study. But that would not shed a great deal of light on the question to which the Commission seeks an answer, why are these documents still, after more than 20 years, under study, and what are the practical consequences of this delay?

"I shall try to deal with the question as to history and background in my capacity as a member of this Commission, speaking personally.

"After close to 20 years of work, the covenants were approved by the U.N. General Assembly in December 1966. Note should be taken of the fact that the Johnson administration, which was then in office, and which had actively participated in the final stages of the work to complete the covenants, had two years and one month to sign them and send them to the Senate, but failed to do so. Nor was any action taken on them during the Nixon and Ford administrations.

"Then, in February 1978, more than 11 years following their approval, the Carter administration signed the covenants and submitted them to the Senate. One year and nine months later, in November 1979, the Senate Foreign Relations Committee held a hearing on them, in which a good deal of favorable and some unfavorable testimony was received. The Carter administration remained in office for another year and two months, but the Senate Foreign Relations Committee took no action. It has not taken any action since that time.

"The Reagan administration, as indicated earlier, has taken the position that the covenants are now under study. If we ask the general question as to why movement on the covenants has been so extraordinarily slow, the answer lies in the fact that since the early 1950's, there has been a significant amount of sentiment in this country against dealing with human rights issues through multilateral treaty arrangements. It may be recalled that in the fifties a constitutional amendment which would have closed the door to such arrangements, the Bricker amendment, and its follow-on George amendment, barely missed two-thirds approval by the Senate.

"We are also well aware of the fact that as simple and clearcut a document as the Genocide Convention, signed in 1948, did not win Senate approval until 1986, and then only after it received the strong support of President Reagan and Secretary Shultz. Even to this day, the implementing legislation to the Genocide Convention which is needed to complete the process, is moving through the Congress at a snail's pace.

"Thus, the answer to the question as to why there has been no action on the covenants in all these years is that opposition in the Senate to international human rights treaties is strong enough to have discouraged the leadership from even trying to get them reported out of committee, let alone schedule them for floor action.

"What have been the consequences of the United States' failure to ratify? One of them, as we all know, has been that the most egregious human rights violators have consistently criticized us for our failure to have adhered to the international human rights covenants. And that is the experience, Mr. Chairman, to which you referred to earlier. When confronted with this criticism, I for one, have responded by saying that in an ideal world it may very well be best for every country to ratify and abide by the covenants.

"However, if one had to choose only one of these, it would be better to abide and not ratify, than to ratify and not abide. That usually ends the conversation.

"There is no doubt that in the early years following approval of the covenants, supporters of the international human rights cause were understandably concerned about our failure to ratify them. As the years have passed though, I believe that experience has taught us that the consequences of our failure to ratify have not been as dire as once believed. Let me explain. One of the important arguments for the covenants was that they are what are called binding instruments. That fact distinguishes them from the Universal Declaration of Human Rights, which as a mere U.N. General Assembly resolution, is, under the terms of the United Nations' Charter nonbinding.

"All of us know, of course, the legal difference between a binding and a nonbinding document. But what we need to look at is what the practical difference may be in the international arena. The only truly effective enforcement mechanism provided for the covenants is the critique of the court of world public opinion. To the extent to which that sanction can be invoked, it can be invoked as much for actions in conflict with the Universal Declaration of Human Rights, which can be viewed as morally binding, as it can be for actions in conflict with the covenants.

"In fact, as the escape clauses in the covenant are far larger than those contained in the Universal Declaration, the Universal Declaration can be more easily invoked than can be the covenants. As it is, the Soviet bloc with its reliance on the escape clauses, tended to reduce much of the Covenant on Civil and Political Rights to a nullity."

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RATIFICATION OF THE INTERNATIONAL COVENANTS BY THE HELSINKI ACCORDS SIGNATORIES

Countries listed in order of signature to the Helsinki Final Act

X#Ratified or acceded to

COUNTRY	INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL & CULTURAL RIGHTS	INTERNATIONAL COVENANT ON CIVIL & POLITICAL RIGHTS	DECLARATION REGARDING ARTICLE 41 OF THE INTERNATIONAL COVENANT ON CIVIL & POLITICAL RIGHTS	OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL & POLITICAL RIGHTS
Federal Republic of Germany	X	X	X	
German Democratic Republic	X	X		
United States of America				
Republic of Austria	X	X	X	
Kingdom of Belgium	X	X		
People's Republic of Bulgaria	X	X		
Canada	X	X	X	X
Republic of Cyprus	X	X		
Denmark	X	X	X	X
Spain	X	X	X	X
Republic of Finland	X	X	X	X
French Republic	X	X		X
United Kingdom of Great Britain & Northern Ireland	X	X	X	
Hellenic Republic of Greece	X			
Hungarian People's Republic	X	X		
Ireland				
Iceland	X	X	X	X
Italian Republic	X	X	X	X
Principality of Liechtenstein				
Grand Duchy of Luxembourg	X	X	X	X
Republic of Malta				
Principality of Monaco				
Norway	X	X	X	X
Kingdom of the Netherlands	X	X	X	X
Polish People's Republic	X	X		
Portugal	X	X		X
Socialistic Republic of Romania	X	X		
San Marino	X	X		X
Holy See				
Sweden	X	X	X	X
Swiss Confederation				
Czechoslovak Socialist Republic	X	X		
Republic of Turkey				
Union of Soviet Socialist Republics	X	X		
Socialist Federal Republic of Yugoslavia	X	X		

Information taken from: "International Instruments Relating to Human Rights," by Jean-Bernard Marie, *Human Rights Law Journal*, Vol. 8, No. 1, 1987.

GPO 1988 64-678 (m)

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IN EUROPE
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